



## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

**[Docket No. NHTSA-2019-0132; Notice 1]**

#### **Hankook Tire America Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Hankook Tire America Corporation (Hankook) has determined that certain Hankook Ventus V2 Concept 2 tires manufactured by Hankook's indirect subsidiary, Hankook Tire Manufacturing Tennessee, LP, do not fully comply with Federal motor vehicle safety standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Hankook filed a noncompliance report dated November 19, 2019, and subsequently petitioned NHTSA on December 5, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of Hankook's petition.

**DATES:** Send comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- Mail: Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.

- Hand Delivery: Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except for Federal Holidays.
- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petitions are granted or denied, notice of the decisions will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also

be viewed on the Internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000 (65 FR 19477-78).

#### **SUPPLEMENTARY INFORMATION:**

**I. Overview:** Hankook has determined that certain Hankook Ventus V2 Concept 2 tires, do not fully comply with paragraph S5.5.1(b) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139).

Hankook filed a noncompliance report dated November 19, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and subsequently petitioned NHTSA on December 5, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of the Hankook's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

**II. Tires Involved:** Approximately 467 Hankook Ventus V2 Concept 2 tires, size 235/45R17V XL H457, manufactured between October 7, 2019, and October 12, 2019, are potentially involved.

**III. Noncompliance:** Hankook explains that the noncompliance is due to a mold error in which the subject tires, were marked with the date-code in the Tire Identification Number (TIN)

inverted and; therefore, they do not meet the requirements of paragraph S5.5.1 (b) of FMVSS No. 139. Specifically, the date code was printed upside down.

**IV. Rule Requirements:** Paragraph S5.5.1(b) of FMVSS No. 139, includes the requirements relevant to this petition. Each tire must be marked on each sidewall with the information specified in paragraph S5.5.1(b) and the tire size designation as listed in the documents and publications specified in paragraph S4.1.1 of FMVSS No. 139.

**V. Summary of Hankook's Petition:** The following views and arguments presented in this section, V. Summary of Hankook's petition, are the views and arguments provided by Hankook. They have not been evaluated by the Agency and do not reflect the views of the Agency. The petitioner described the subject noncompliance and stated their belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Hankook submitted the following reasoning:

1. Under the Safety Act, each FMVSS promulgated by the National Highway Traffic Safety Administration (NHTSA) must be "practicable, meet the need for motor vehicle safety, and be stated in objective terms." 49 U.S.C. § 30111(a). The Safety Act defines "motor vehicle safety" as:

the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.
2. 49 U.S.C. § 30102(a)(9).

The Safety Act exempts manufacturers from the Safety Act's notice and remedy requirements when NHTSA determines that noncompliance is

inconsequential as it relates to motor vehicle safety. *See* 49 U.S.C. §§ 30118(d) and 30120(h). Sections 30118(d) and 30120(h) demonstrate Congress's acknowledgment that there are cases where a vehicle fails to meet the requirements of a safety standard, yet the impact on motor vehicle safety is so slight that an exemption from the notice and remedy requirements of the Safety Act is justified. Hankook quoted the following text from BMW of North America, LLC; Jaguar Land Rover North America, LLC; and Autolive, Inc., 84 FR 19994 (May 7, 2019), Decision of Petitions for Inconsequential Noncompliance.

Neither the Safety Act nor Part 556 defines the term "inconsequential."

Rather, the agency determines whether particular noncompliance is inconsequential to motor vehicle safety based upon the specific facts before it in a particular petition. In some instances, NHTSA has determined that a manufacturer met its burden of demonstrating that a noncompliance is inconsequential to safety. For example, a label intended to provide safety advice to an owner or occupant may have a misspelled word, or it may be printed in the wrong format or the wrong type size. Where a manufacturer has shown that the discrepancy with the safety requirement is unlikely to lead to any misunderstanding, NHTSA has granted an inconsequentiality exemption, especially where other sources of correct information are available.

3. The noncompliance involves new pneumatic radial tires used on passenger vehicles. Such tires must comply with the labeling and performance requirements of FMVSS

139, which specifies that “each tire must be labeled with the tire identification number required by 49 CFR Part 573.4 on the intended outboard sidewall of the tire.” FMVSS 139 S5.5.1(b). Part 574(a) states that “[e]ach new tire manufacturer must conspicuously label on one sidewall of each tire it manufactures... a TIN [tire identification number] consisting of 13 symbols and containing the information set forth in paragraphs (b)(1) through (b)(3) of this section.” Subparagraph (b)(3) requires a date code “consisting of four numerical symbols... [that] must identify the week and year of manufacture.” 574.5(b)(3.)

4. The purpose of the labeling requirements in Part 574 is to "facilitate notification to purchasers of defective or nonconforming tires." Part 574.2. The date code portion of the TIN is required so that purchasers can identify the week and year of the tire's manufacture in the event the tire is subject to a safety recall.
5. The date-code characters reflect the correct week and year of the tires' manufacture, but the date code is technically out of compliance because the characters are inverted. Despite the inversion, the date code meets the character height requirements of Part 574 and is readily identifiable, permitting tire owners to easily determine the week and year of manufacture.
6. NHTSA has previously granted a petition for inconsequential noncompliance for a similar issue. In granting a petition from Cooper Tire & Rubber Company, 81 FR 43708 (July 5, 2016) the Agency explained:

The Agency believes that in the case of a tire labeling noncompliance, one measure of its inconsequentiality to motor vehicle safety is whether the mislabeling would affect the manufacturer's or consumer's ability to identify

the mislabeled tires properly, should the tires be recalled for performance related noncompliance. In this case, the nature of the labeling error does not prevent the correct identification of the affected tires. 49 CFR 574.5 requires the date code portion of the tire identification number to be placed in the last or correct position. In Cooper's case, it is in the right-most position, however, the manufacture date code is upside down. Because the label is located on the tire sidewall, it is not likely to be misidentified. A reader will be able to read the date code, by spinning the tire, and therefore inverting the date code will allow it to easily be read.

As with the Cooper tires, the date code on the subject tires is located on the sidewall, is not likely to be misidentified, and a reader will be able to read and understand the date code. The subject tires otherwise meet the marking and performance requirements of FMVSS No. 139.

7. The labeling noncompliance at issue here is inconsequential to motor vehicle safety: the relevant information remains readily identifiable, the Agency has granted a similar petition in the past, the subject tires otherwise meet the marking and performance requirements of FMVSS No. 139, and Hankook is not aware of any complaints, claims or incidents related to the subject noncompliance.

Hankook concluded by expressing its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that Hankook no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Hankook notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

**Otto G. Matheke III,**

*Director, Office of Vehicle Safety Compliance.*

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